Brown, Brian (TM)

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:27 PM
To: Brown, Brian (TM)
Subject: FW: small business study

Attachments: TM Feedback questions 12-9-10.doc

TM Feedback
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-----Original Message-----
From: carl@vennittis.com [(b)(6)
Sent: Thursday, December 09, 2010 2:38 PM
To: TMFeedback
Subject: small business study

December 9, 2010

United States Patent and Trademark Office

Re: TMFeedback@uspto.gov

To Whom It May Concern:

I have reviewed the case histories of several Oppositions brought against Trademark Applicants and questions have formed as to what policy is used by the USPTO regarding information availability.

1. When an Application is filed and a number is assigned to the Application, is the information regarding the Application confidential?

2. If an Application is not confidential information, what fail-safes are provided for by the USPTO to insure that trade secrets, intent of use and channels of trade are protected from unscrupulous bully competitors or potential competitors?

3. The time frame between filing an Application and publication in the Official Gazette varies depending upon issues directly relating to corrections and amendments of the Application; at anytime are the procedures public information?

4. It is historical that an Application is available for public review and Opposition review when published for Opposition in the Official Gazette; is this Agency policy?

5. If at anytime an Application is available for public review before the official publishing in the Official Gazette, what is the purpose of publishing for Opposition?

6. Would any potential Opposer be made aware, in advance of publication, of an Application that is construed by an Agency employee to have potential Opposition merits?

7. Other than being viewed in the Official Gazette, how would an Opposer know that a Mark has been applied for?

This is a very simple exercise in trying to understand the inner workings of a government agency. My questions are not in anyway unfounded. Kindly respond.

Carl Vennitti
(b)(6)

United State Patent and Trademark Office

Re: TMFeedback@uspto.gov

To whom it may concern:

Thank you for your informative responses to my questions regarding the Trademark approval process. As a matter of closure in addressing my concerns as afforded by the forum made available, I wish to pose this hypothetical scenario that directly relates to the trademark bully issues. Using the excerpts below from my previous correspondence as a basis:

[edited text…]

(Answers by USPTO highlighted)

4. It is historical that an Application is available for public review and Opposition review when published for Opposition in the Official Gazette; is this Agency policy?

It is available for review as soon as filed and uploaded into the USPTO database and for the remainder of the process.

5. If at anytime an Application is available for public review before the official publishing in the Official Gazette, what is the purpose of publishing for Opposition?

The purpose of publication for Opposition is that it provides specific notice that the USPTO intends to issue a registration (or, Notice of Allowance, if the appication is based on an intent to use basis), and as such, should the public believe this is not appropriate, then the opportunity to file an objection. Not all applied for applications proceed to this stage, so it is different than simply being able to view the information within the application.

6. Would any potential Opposer be made aware, in advance of publication, of an Application that is construed by an Agency employee to have potential Opposition merits?

No. It is the responsibility of any potential Opposer to monitor the status of all filed applications.

7. Other than being viewed in the Official Gazette, how would an Opposer know that a Mark has been applied for?

The USPTO database (available at #2 in the Trademarks column at www.uspto.gov) must be searched routinely to see any applied-for mark.

[End of text]

Hypothetical scenario:

ABC Corporation is a multi-national conglomerate with widely diversified manufacturing affiliates. Through various acquisitions over the history of ABC Corporation, they are the owners and/or licensees of multiple trademarks. Because of its' own abilities, ABC Corporation has vast financial resources, and to protect the interests of it many subsidiaries, it maintains a department within its' corporate structure to monitor trademark applications for possible infringement issues.

123 Company is a small regional company that is well known in its' local geographic territory.

123 Company has identified potential new markets for its' goods and/or services. 123 Company would expand its' workforce and purchase new equipment to accommodate their expansion. 123 Company wants to protect their unique goods and/or services and has initiated a preliminary trademark search. Their preliminary search unearths no registered mark that may pose an issue of infringement by the 123 Company. Finding the proper classification in the Trademark ID Manual, 123 Company proceeds to the filing process according to the guidelines of the USPTO.

The person in charge of trademark monitoring for ABC Corporation views the newly uploaded Application of 123 Company and immediately determines that the Mark being applied for may create competition for a registered Mark owned or licensed by ABC Corporation. Because the Application has not yet been reviewed by an Examining Attorney, and no official determination has been made that would allow any official Opposition, ABC Corporation simply files a law suit against 123 Company for infringement because the applied for mark is already in commerce.

123 Company does not have the financial resources to combat the strength of ABC Corporation so it simply withdraws its' application and ABC Corporation is relieved from possible competition.

The current system of the USPTO allows for this bullying to happen.

Fundamental changes in the USPTO process must occur to prevent trademark bullying as described yet still maintain the protections afforded to trademark owners. A trademark application should not be available for public view until after the due process of an approval by the Examining Attorney.

Thank you

Carl Vennitti
(b)(6)

Brown, Brian (TM)

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:28 PM
To: Brown, Brian (TM)
Subject: FW: Small Business Study
Attachments: Facebook-USPTO1129.doc

From: Carl (b)(6)
Sent: Monday, November 29, 2010 7:40 AM
To: TMFeedback
Subject: Small Business Study

Carl Vennitti
(b)(6)

To the United States Patent and Trademark Office:

I am inputting this concern regarding the request as presented at TMFeedback@uspto.gov in advance of our formal filing which will take place prior to the final entry date.

The recurring issue which is well covered is the allowance of the USPTO to enable Facebook to now register 'face', as well as their already trademarked word, 'book'. We find this to be somewhat unconventional with respect to the USPTO for the arguments stated in the two following links:

http://news.yahoo.com/s/digitaltrends/20101124/tc_digitaltrends/facebooktrademarksthewordfacetm

http://money.cnn.com/2010/08/27/technology/facebook_trademark_face/index.htm

The word 'face' and also the word 'book' are generic in nature and the allowance of the USPTO to register these two words to a monolithic giant such as 'Facebook" opens the door to the USPTO's specific request for incidences of bullying on the part of Trademark holders.

Furthermore, the fact that the USPTO has developed a link into the Facebook network is counterproductive to abstractly view any application presented by Facebook for trade marking by the USPTO. This activity by the USPTO loosely pushes the defined limits of crossing into First Amendment violations by testing the limits of the separation of "church and state". The USPTO displays blatant favoritism due to the fact that they have become a part of the social phenomenon of Facebook. This 'cute' social networking forum is not a place for a respected agency of the federal government to be a part of. This situation certainly casts a cloud over the impartial judgment qualifications of the USPTO. The collusion between Facebook and the USPTO is a potential violation to the Fourteenth Amendment as well.

Facebook has already initiated litigation against other trademarks and trademark Applications that incorporate the word 'book'. Allowing Facebook to register 'face', regardless of its' narrow parameters, opens up a potential onslaught of litigation by an industry giant with unlimited financial resources to quell any attempt by anyone to register a like wording. And being in collusion with Facebook, the USPTO virtually guarantees that Facebook will prevail in sustaining all Oppositions it enacts.

In an additional instance, Nestle USA has somehow manipulated, either directly or through counsel, the USPTO, or one of its' employees, to remove the generic descriptor of 'pocket' from the ID Manual. Facebook, through the association with the USPTO, will legally be able to do the same to countless others who do not possess the financial resources to combat this practice.

Carl Vennitti